United Nations S/2003/837

Security Council

Distr.: General
27 August 2003

Original: English

Letter dated 27 August 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 May 2003 (S/2003/588).

The Counter-Terrorism Committee has received the attached third report from the Sudan submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-48861 (E) 071003 071003

Annex

Letter dated 11 August 2003 from the Permanent Representative of the Sudan to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to enclose herewith the supplementary report of the Government of the Republic of the Sudan in response to your letter dated 9 May 2003 (see enclosure).

(*Signed*) Elfatih **Erwa**
Permanent Representative

Enclosure

[Original: Arabic]

Third report of the Government of the Sudan in response to the questions of the Counter-Terrorism Committee contained in its letter dated 9 May 2003

Paragraph I: Implementation measures

1.2 International Convention for the Suppression of the Financing of Terrorism

The Sudan has completed the procedures for ratification and deposited the instrument of ratification with the Secretary-General of the United Nations in May 2003. The Sudan has thus ratified all 12 United Nations treaties concerning counter-terrorism together with all the regional instruments and the counter-terrorism conventions of the Organization of the Islamic Conference and the African Union.

The United Nations Convention against Transnational Organized Crime is currently with the Council of Ministers for authorization of the completion of the legal procedures for ratification.

1.3 Domestic legislation to combat money-laundering

By its decision No. 119/2003 of 9 March 2003 (annex 1) the Council of Ministers approved the draft law with the proviso that its drafting must be consistent with international legislation on combating money-laundering, particularly in connection with related international crimes. The draft law is currently before the National Council (Parliament) for approval of its promulgation. In the meantime, the banks are obliged to combat money-laundering in accordance with the anti-money-laundering order of 20 May 2002 (annex 2) of the Bank of the Sudan (the Central Bank) the provisions of which are intended, in particular, to support international anti-money-laundering efforts. The bulletin of the Bank of the Sudan directs the banks to cooperate among themselves and with banks abroad in accordance with the laws and procedures in force.

The bulletin directs the banks to notify the Bank of the Sudan immediately of any suspect funds. It also introduces appropriate measures for the freezing of such funds or for referral of the matter to the competent judicial authorities. Bank officials are required to inform their supervisors immediately of any suspicions they may have concerning funds deposited in the Bank. The external auditor of the Bank is responsible for evaluating the Bank's implementation of the anti-money-laundering policy.

The anti-money-laundering bulletin of the Bank of the Sudan makes provision, with immediate effect, for the establishment of units to combat money-laundering. In implementation of that provision, and within the fra nework of the terms of reference of the Bank of the Sudan under the Act of 1959, the Governor of the Central Bank issued administrative order No. 26/2002 in August 2002 (annex 3) establishing the Bank's Financial Information Unit (FIU) which is mandated to receive information and reports from the banks and financial institutions, to analyse such material to verify the validity of the sources of funds and the uses to which they are put, to block reported transactions that are suspected of representing money-laundering or which are linked with terrorism or financial crime, to report on

them and to provide information on suspicious assets, frozen accounts and individuals and entities with which dealings are prohibited by order of the State.

The Unit is now carrying out its work within the Central Bank.

1.4 Working methods of banks and other money transfer agencies and the laws regulating their work

A licence to engage in banking operations is granted through the Central Bank after study of the necessary documents from the records of the company, its certificate of incorporation, the approval by the Registrar General of Sudanese companies and a certificate of good standing from the banks that deal with the company. The licences of the exchange agencies are renewed annually after verification that the agencies have complied fully with all the policies regulating their activities emanating from the Central Bank. The currency agencies have to retain statements of account, periodic reports and audit statements, and must keep methodical accounting records covering all operations performed which are submitted for verification to the inspectors of the Central Bank who revise them where required. The Central Bank also directly supervises the currency agencies and inspects them periodically.

The regulations require transfers abroad to be made through known correspondents, thereby simplifying the monitoring process, and the names and addresses of the party making the transfer and of the beneficiary and the date must be specified. The supporting documents must also be retained (annex 4).

Any operation involving foreign currency is regarded as falling outside the banking and exchange agency system and is a breach of the law for which the bodies concerned are held liable and penalized. The penalty may include confiscation of the funds involved in the operation in addition to other penalties under the relevant laws.

1.6 What are the procedures followed to deal with requests from other States in the matter of criminal investigations and judicial proceedings?

The Sudan applies procedures for judicial cooperation with respect to the handing over of offenders, the exchange of documents, the taking of evidence, requests for judicial assistance and other matters, in accordance with its obligations under international and regional instruments to which it is a party such as counter-terrorism conventions and the Riyadh Convention on Judicial Cooperation of 1983 and 1957 Extradition Act. It also cooperates on an ongoing basis with Interpol and, in the context of bilateral conventions, with several other States.

The Sudanese Act on the regulation of refugees of 1974, for example, permits the refusal of entry to a refugee who has committed a non-political crime outside the Sudan.

Under the provisions of these conventions the Sudan carries out its international obligations in connection with the facilitation of judicial investigations and procedures.

For example, in May 2003, the Sudan handed over to the Kingdom of Saudi Arabia a number of persons suspected of having been involved in terrorist activities. In February 2003, it handed over a person accused of hijacking a Saudi Arabian civilian aircraft. This took place in the context of judicial cooperation under the

Arab Convention on the Suppression of Terrorism of 1998, and the Riyadh Convention on Judicial Cooperation of 1983. The Sudan handed over the hijackers of the Ethiopian plane in accordance with a bilateral agreement between the two countries on extradition.

1.7 The Sudan has acceded to the 12 international instruments relating to the suppression of terrorism and a committee set up by the Minister of Justice (annex 5) is currently studying the domestic legislation and those instruments in order to ensure conformity with the international conventions. In general, domestic legislation such as the Anti-Terrorism Act of 2000, the Weapons, Munitions and Explosives Act of 1986 (annex 6), the Civil Aviation Act of 1999 (annex 7), the Penal Code of 1991 (annex 8), and other relevant legislation, provide penalties for crimes specified in those instruments.

Technical assistance

The Government of the Sudan has taken the initiative in the implementation of Security Council resolution 1373 (2001) concerning counter-terrorism by establishing and developing specialized units. The Ministry of the Interior has set up a counter-terrorism unit, the Bank of the Sudan has set up the Financial Information Unit and the Ministry of Justice has set up a specialized counter-terrorism agency (annex 9). There is also a coordinating agency for following up the implementation of resolution 1373 (2001) which includes various relevant State services and which makes recommendations as necessary to the State and its various services concerning the most appropriate means of implementing the resolution. It also prepares the necessary reports for the Counter-Terrorism Committee of the Security Council.

All these bodies are in need of technical support. A start on such cooperation was the visit to the Sudan in June 2003 of an expert of the World Bank in the field of money-laundering, an offer by friendly States to cooperate with the Sudan in this field and the offer by a friendly European State which expressed its willingness to support the counter-terrorism unit in the Ministry of the Interior.

The Government of the Sudan thanks the Counter-Terrorism Committee for its interest in the Sudan's request for technical support. When the Government has completed the information on its requirements, it will submit a comprehensive study to the Committee. The anti-money-laundering agency of the Central Bank will also contact the joint programme of the World Bank and the International Monetary Fund, as suggested in paragraph 2.3 of the above-mentioned letter from the CTC.

6 August 2003

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Security Council

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Letter dated 27 August 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 May 2003 (S/2003/597).

The Counter-Terrorism Committee has received the attached third report from Cuba submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-48853 (E) 061003 061003

Annex

Letter dated 19 August 2003 from the Permanent Representative of Cuba to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: Spanish]

I am pleased to transmit to you herewith the responses of the Government of the Republic of Cuba to the questions raised in your letter dated 16 May 2003 concerning the supplementary report of Cuba (S/2002/1093) of 24 September 2002 (see enclosure).

I take this opportunity to reiterate Cuba's willingness to continue cooperating with the Counter-Terrorism Committee of the Security Council.

(*Signed*) Bruno **Rodriguez Parrilla**
Ambassador
Permanent Representative

Enclosure

[Original: Spanish]

Report submitted by the Republic of Cuba to the Counter-Terrorism Committee in response to its questions on the supplementary report of Cuba (S/2002/1093)

1. Please explain whether the powers of the banks to freeze assets have statutory force. If so, please provide an outline of the legal provisions in this regard. Please also indicate whether under the existing provisions of law it is possible to freeze funds, assets etc in Cuba of resident or non resident suspected to be linked to terrorism at the request of another State.

Following the implementation of resolution 91/97 of the Minister-President of the Central Bank of Cuba in 1997, the Cuban banking and financial system has been implementing policy guidelines to prevent and detect illicit capital movements.

To that end, all commercial banks licensed by the Central Bank of Cuba to open accounts for Cuban or foreign individuals or legal persons, irrespective of the place of residence and the transaction effected in or with Cuba, use the internationally recognized concepts of "due diligence" and "know-your-client" as daily tools. The central and provincial branches of the banks monitor compliance with these two concepts, which are set out in each bank's instructions and procedures manual.

Furthermore, the banks that are not authorized to carry out the transactions described in the preceding paragraph have the above-mentioned manuals which contain the regulations established by the Central Bank and tailored to the specific characteristics of each individual bank.

The following main regulations have been in force since 1997:

1. Resolution 91/97;

2. Instructions No. 1, 2, 8, 17 and 18, which supplement and enrich the above-mentioned resolution;

3. Instruction No. 19, issued by the Superintendent of the Central Bank of Cuba in May 2002, established 14 guidelines for the fight against terrorist financing. That Instruction drew on the provisions of Law No. 93 entitled, "Law against acts of terrorism" of 20 December 2001 of the Republic of Cuba; the United Nations Convention for the Repression of Terrorist Financing of 1999; Security Council resolution 1373 (2001) of 28 September 2001; and the eight recommendations of the Organization for Economic Cooperation and Development Financial Action Task Force on Money Laundering of 31 October 2001.

The Bank Supervision Division of the Central Bank is currently working on merging, streamlining and updating instructions No. 1 and No.2 with a view to consolidating in only two instructions all the legislation supplementing Resolution 91/97.

The Central Bank of Cuba has formulated appropriate regulations for freezing any financial or economic assets in a bank account if there is irrefutable evidence

that not only are such assets the proceeds of various kinds of criminal activity but also that they could be used to finance terrorist activities in Cuba or abroad.

The procedure for freezing funds and other financial assets takes in practice 24 hours, running from the date and time of the notice of the order issued by any competent court in Cuba or government attorney. Furthermore, the Cuban justice system has extended the competence of fiscal and security judges to enable them to carry out this process.

As long as there is evidence that irrefutably shows that money-laundering is taking place and that such funds may be used for financing acts of terrorism, irrespective of the nationality and domicile of the individual or legal person holding those funds, banks have the competence to take action to block and freeze such funds.

If, with due regard for the proper procedures and our national legislation, a request is issued by another country for the freezing of funds of non-resident persons and entities supporting terrorism abroad, the Central Bank of Cuba is free to cooperate with such a request. A fully substantiated request shall be submitted to the Central Bank of Cuba, which shall then inform the bank where the person suspected of having terrorist links has his assets to freeze the funds. To date, no financial institution has been penalized. In accordance with the guidelines stipulated by the Bank of Cuba, whenever suspicious transactions have been detected, they have been reported. Prevention compliance officials in branches of each financial institution up to the municipal level play a key role in this process and are responsible for on-site detection of any activity that might give rise to suspicion.

2. At page 18 of the supplementary report it is stated that article 6(3) of the Penal Code provides that foreigners who are prosecuted because they have fought against imperialism, colonialism, neo-colonialism, fascism or racism or because they have defended democratic principles or the rights of the working people shall not be extradited. The CTC would be grateful if Cuba could explain whether this would lead to the rejection of a request from a State to extradite a foreigner found in Cuba who was accused of committing terrorist acts punishable under Law No.93, the Law Against Acts of Terrorism. If such requests are rejected then how would Cuba deal with such perpetrators of terrorist acts that are punishable under the Cuban law?

Since both the Charter of the United Nations and international law recognize the right of peoples to self-determination, the inherent right to self-defence and the right to fight against foreign occupation, those exercising their rights in that regard could never be referred to as terrorists. This is in keeping with the universally recognized principle of not handing over some aliens.

In that regard, Cuba has supported the legitimate demand of a representative group of developing countries to draft an international convention on the issue that would make a clear distinction between terrorism and the struggle of peoples against foreign occupation.

On the other hand Cuba, which has been subjected to continuing terrorist threats over the past 40 years and has unequivocally condemned all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomever they may be committed, and has refused to assist or harbour anyone who commits, promotes or is associated with terrorist acts, cannot reject the request of a State to extradite a foreigner accused of terrorist acts such as those provided for by

Cuban criminal legislation or by international conventions to which both Cuba and the requesting State are parties. In such cases, Cuba would comply with the principle of aut dedere aut judicare, unless it felt that the alien whose extradition is sought would not be guaranteed a fair trial or that the evidence did not show that the suspect was involved in the offence charged.

However, Cuba would comply with its duty under its domestic legislation to try those aliens suspected of committing terrorist acts that were planned and perpetrated on Cuban territory, but were committed abroad or vice versa.

3. The CTC is aware that Cuba may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Cuba's response to these matters as well as details of any efforts to implement international best practices, codes and standards which are relevant to the implementation of resolution 1373.

Cuba has indeed included some of the points covered in its previous reports to the Counter-Terrorism Committee published by the Secretariat as documents S/2002/15 (Initial report of Cuba to the CTC) and S/2002/1093 (Supplementary report). Since the two reports are already with the Committee, it is not necessary to annexe copies.

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Security Council

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Letter dated 27 August 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 May 2003 (S/2003/586).

The Counter-Terrorism Committee has received the attached third report from the Republic of the Russian Federation submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-48841 (E) 071003 081003

Annex

Letter dated 11 August 2003 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Russian]

In accordance with paragraph 6 of Security Council resolution 1373 (2001) and in reply to your letter of 9 May 2003, I have the honour to transmit the third report of the Russian Federation to the Committee on Counter-Terrorism of the United Nations Security Council on progress in the implementation of the aforementioned resolution (see enclosure).*

(*Signed*) Gennadi **Gatilov**
Permanent Representative a.i.

* Annexes are on file with the Secretariat and are available for consultation.

Enclosure

Information provided by the Russian Federation in response to the additional questions and observations prepared by the Counter-Terrorism Committee of the Security Council in connection with the supplementary report of the Russian Federation submitted in accordance with Security Council resolution 1373 (2001)

1.2. **It is stated on the one hand in the reply to subparagraph 1 (c) on the question of freezing funds, etc., inter alia that investigative and judicial bodies when they are carrying out international investigative requests in accordance with international agreements could decide to freeze accounts and on the other articles 115 and 116 of the Code of Criminal Procedure provide for the possibility of attaching the accounts of both individual citizens and organizations for criminal cases being tried which involve terrorism and other related offences (page 4 of the supplementary report). It is not clear therefore whether the investigative authorities in the Russian Federation could decide to freeze assets of those individuals and entities, both residents and non-residents, suspected of having links with terrorism without any case being instituted in a court against the concerned individuals and entities. The CTC would be grateful for an explanation of the relevant provisions of law in this regard.**

In accordance with Act No. 115 of the Russian Federation of 7 August 2001, "On the prevention of the legalization of funds obtained by criminal means (money-laundering) and the financing of terrorism", operations involving money or other assets are subject to mandatory control if even one of the parties involved is an organization or a physical person which, according to evidence obtained in accordance with this Federal Act, has participated in extremist activities, or a legal person which directly or indirectly owns or is under the control of such an organization.

The procedure for establishing a list of organizations carrying out operations involving money or other assets and bringing it to the attention of those organizations and persons is determined by the Government of the Russian Federation.

Grounds for the inclusion of an organization or physical person in that list are:

- A decision by a court of the Russian Federation which has entered into force abolishing, or banning the activities of, an organization in connection with its extremist activities;
- A judgement of a court of the Russian Federation which has entered into force that a physical person is guilty of a criminal offence related to terrorism;
- A decision of the Public Prosecutor of the Russian Federation or a prosecutor appointed by him to suspend the activities of an organization in connection with an appeal before the court stating that the organization is responsible for terrorist activities;
- A decision of an investigator or prosecutor to institute criminal proceedings against a person who has committed a crime of a terrorist nature;

- Lists of organizations and physical persons connected with terrorist organizations or terrorists compiled by international organizations involved in combating terrorism, or by their subsidiary organs, which are recognized by the Russian Federation;

- Judgements (decisions) of courts and decisions of other competent organs of foreign States recognized in the Russian Federation in accordance with international agreements to which the Russian Federation is a party and with Federal laws regarding organizations or physical persons involved in terrorist activities.

Organizations conducting operations involving money or other assets shall suspend such operations, with the exception of operations to enter money deposited in the account of a physical or legal person, within two working days of the date on which the client had requested that the operations should be carried out, and no later than one working day following the date on which the operations were suspended they shall present information on those operations to the competent organ in the event that one of the parties is an organization or a physical person which, according to evidence obtained in accordance with this Federal Act, has participated in terrorist activities, or a legal person which directly or indirectly owns or is under the control of such an organization or person, whether a legal or a physical person, and is acting on behalf of or on the order of, such an organization or person.

The competent organ (article 8 of the Act), appointed by the President of the Russian Federation, is the Federal executive authority whose purposes, functions and authority in the area of combating the legalization of funds attained by criminal means (money-laundering) and the financing of terrorism have been established in accordance with this Federal Act.

Decree No. 263 of the President of the Russian Federation of 1 January 2001 established the Committee of the Russian Federation for Financial Monitoring, which is the Federal executive organ authorized to take measures to combat the legalization of funds obtained by criminal means (money-laundering) and to coordinate the activities of the Federal executive organs in this area.

By resolution No. 211 of 2 April 2002, the Government of the Russian Federation confirmed the establishment of the Committee of the Russian Federation for Financial Monitoring.

Given sufficient grounds indicating that an operation or transaction is linked to the legalization of funds obtained by criminal means (money-laundering) or the financing of terrorism, the competent organ shall transmit the relevant information and material to the law enforcement organs according to their areas of competence (as stated in Federal Act No. 131 of 30 October 2002).

The competent organ shall issue a decision suspending operations involving money or other assets within five working days, if the information it has received in accordance with the Act, as a result of a preliminary examination, is recognized to be well-founded (in accordance with Federal Act No. 131).

In accordance with article 10 ("Exchange of information and legal assistance") of Act No. 115 of the Russian Federation of 7 August 2001 "On the prevention of the legalization of funds obtained by criminal means (money-laundering) and the financing of terrorism", State organs of the Russian Federation involved in the

prevention of the legalization of funds obtained by criminal means (money-laundering) and the financing of terrorism, in accordance with international agreements to which the Russian Federation is a party shall cooperate with the competent organs of foreign States in that area including at the stage of the preliminary investigation.

State organs of the Russian Federation involved in activities connected with the prevention of the legalization of funds obtained by criminal means (money-laundering) and the financing of terrorism, in accordance with international agreements to which the Russian Federation is a party and Federal law, shall (within the limits of their competence) comply with requests from the competent organs of foreign States concerning the confiscation of funds obtained by criminal means which are used for the financing of terrorism, and concerning various procedural matters relating to the detection of funds obtained by criminal means and the financing of terrorism, the attachment of property and the freezing of assets, and shall provide expertise, interrogate suspects, witnesses, victims and other persons, conduct searches and seizures, transmit material evidence, attach property, serve summonses and transmit documents (in accordance with Federal Act No. 131).

Thus, the investigative organs of the Russian Federation may take decisions to freeze the accounts of individuals or organizations, both residents and non-residents, suspected of having links with terrorism, without any criminal case having been instituted against them, while conducting interrogations or providing legal assistance.

In accordance with article 146 of the Code of Criminal Procedure of the Russian Federation, criminal proceedings may be instituted by investigating officials with the agreement of the prosecutor, and also by the prosecutor. The courts do not have the right to institute criminal proceedings.

The provisions of articles 115, 166 and 165 of the Code of Criminal Procedure of the Russian Federation concerning the procedure for the attachment of property and securities govern the pre-trial procedure in criminal cases in the territory of the Russian Federation unless, in accordance with article 2, paragraph 1, of the Code, an international agreement to which the Russian Federation is a party states otherwise.

In accordance with the international agreements to which the Russian Federation is a party and federal laws, judgements (decisions) of the courts of foreign States, which have entered into force, regarding persons possessing funds obtained by criminal means are recognized.

In accordance with international agreements to which the Russian Federation is a party, judgements (decisions) of the courts of foreign States, which have entered into force, regarding the confiscation of funds obtained by criminal means or assets of equivalent value are recognized and enforced.

Funds obtained by criminal means or assets of equivalent value which have been confiscated may be transmitted in full or in part to the foreign State whose court handed down the decision regarding confiscation, in accordance with the relevant international agreement to which the Russian Federation is a party.

1.3. **The CTC would be grateful to be informed whether the Federal Act No. 152289-3 on the introduction of amendments and additions to the Federal Act**

"On measures to combat terrorism" received the assent of the State Duma and has become an enforceable law.

Draft Federal Act No. 152289-3 on the introduction of amendments and additions to the Federal Act "On measures to combat terrorism" (relating to operational information and compensation for losses caused by terrorist acts), in connection with the adoption by the Security Council of resolution 1373 (2001), was voted down by the State Duma of the Federal Assembly of the Russian Federation on 11 April 2003, by its resolution No. 3880-111.

1.4. **It is stated in the supplementary report (page 5) that the Russian Federation Law does not contain legal rules governing alternative money transfer mechanisms. How does the Russian Federation then propose to regulate illegal and clandestine transfer through mechanisms such as Hawala?**

Under the law of the Russian Federation, illegal and clandestine money-transfer mechanisms such as Hawala can constitute offences as unlawful business activities (article 171 of the Criminal Code) or unlawful banking activities (article 172 of the Criminal Code).

Article 172 of the Criminal Code of the Russian Federation establishes criminal liability for the carrying out of banking activities (banking operations) without registration or the necessary licence, or contrary to the conditions under which the licence was issued (where serious loss is suffered or considerable income is derived). Article 15.26 of the Code on administrative offences establishes administrative liability for breaking the law on banks and banking activities

1.5. **It is stated in reply to subparagraph 1 (d) (at page 6) in the supplementary report that lawyers and other financial intermediaries are not required to report suspicious transactions as required by the Federal Act No. 115. Article 18 of the Convention for the Suppression of the Financing of Terrorism requires that other professions involved in financial transactions also pay attention to unusual or suspicious transactions and report suspicious transactions stemming from a criminal activity. As the Russian Federation has become a party to the Convention, how does the Russian Federation propose to meet this requirement of the Convention?**

In accordance with the requirements of article 18 of the International Convention for the Suppression of the Financing of Terrorism, persons professionally involved in financial transactions are also required to pay attention to unusual or suspicious transactions, and to report on suspicious transactions stemming from criminal sources. The Russian Federation is a party to that Convention. It has discussed with representatives of the Financial Action Task Force on Money Laundering (FATF) the issue of expanding the list of bodies and individuals required to report suspicious financial transactions to the appropriate organ.

In order to further improve Russian legislation to combat money-laundering, proposals are being prepared to introduce amendments and additions to the corresponding law on the monitoring of the activities of financial intermediaries, obliging them to report to the competent organ any unusual or suspicious transactions.

In January 2003, Federal Act No. 115 was amended to extend its application to organizations which provide gambling services (totalizators, betting offices, lotteries and prize draws), buy and sell precious metals and stones, or manage investment funds or non-State pension funds. As a result of these amendments, when one or more parties to a transaction are known to be involved in extremist activities, credit institutions may refuse to open an account or conduct a transaction if a physical or legal person has not provided the necessary identification or other information. The law directs the credit institutions to report suspicious transactions or those subject to compulsory monitoring to the Committee of the Russian Federation for Financial Monitoring.

Article 7 of the aforementioned Act obliges the reporting organizations to identify the physical or legal persons on whose instructions they carry out transactions; to collect detailed information on transactions which are subject to mandatory controls and communicate this information to the Committee of the Russian Federation for Financial Monitoring within one working day from the date of the transaction; to provide information to the Committee of the Russian Federation for Financial Monitoring in response to written enquiries; and establish rules for internal monitoring and appoint officials responsible for ensuring compliance with those rules. The Act also requires that the internal monitoring rules should include a procedure to ensure that important information is recorded, provide for the protection of confidentiality, establish the requirements in terms of qualifications for the preparation and training of staff and determine the criteria for the detection of unusual transactions. The internal monitoring rules are worked out on the basis of recommendations adopted by the Central Bank of the Russian Federation (in the case of credit institutions) and by the Government of the Russian Federation (in the case of other reporting organizations).

Moreover, Russian legislation, in accordance with the recommendations of FATF, requires that reports should be submitted when large currency transactions take place in excess of a given sum. The Russian Federation uses a system of reporting on large cash transactions. Article 6 of Federal Act No. 115 requires reporting organizations to submit to the Committee of the Russian Federation for Financial Monitoring information on transactions to the value of 600,000 roubles (approximately €16,700 or US$ 19,300 at May 2003 rates) which involve: a cash deposit to or withdrawals from the account of a legal person in circumstances which do not correspond to the nature of its economic activity; the purchase or sale of cash sums in foreign currency; the acquisition of securities for cash; the cashing of a cheque to the bearer which has been issued by a non-resident; the changing of banknotes of one denomination for banknotes of a different denomination; or cash payments into the core capital of a legal person.

There are currently a number of supervisory organs which are responsible for ensuring that reporting organizations which come under their authority comply with the requirements of the Act in terms of preventing money-laundering and the financing of terrorism.

The Central Bank is responsible for the supervision of credit institutions (banks). The Insurance Monitoring Department of the Ministry of Finance is responsible for monitoring insurance companies and organizations which manage non-State pension funds. The Assay Office of the Ministry of Finance monitors organizations which buy and sell precious metals and stones, and the Ministry of

Communications is responsible for monitoring post offices. The Federal Securities Commission of the Russian Federation bears the responsibility for the monitoring of professional members of the securities market. The Committee of the Russian Federation for Financial Monitoring monitors pawnshops, leasing companies and gambling services.

1.6. **It is not clear from the reply given to the question on subparagraph 2 (e) at page 14 of the supplementary report that a foreign national accused of a terrorist offence committed outside the territory of the Russian Federation when found in Russian Federation territory will be tried in the Russian Federation if, for some reason, the person is not extradited. The CTC would be content to know the legal position in this regard.**

As a party to the main international counter-terrorism conventions, the Russian Federation adheres to the principle whereby it establishes its jurisdiction over terrorist crimes in cases where those who have committed such crimes are in its territory; it does not hand them over to any other State party.

Criminal legal action in respect of persons who have committed crimes outside the territory of the Russian Federation is governed by article 12 of the Criminal Code. Under paragraph 3 of that article, if a foreign national or stateless person not living permanently in the Russian Federation has committed a crime outside the territory of the Russian Federation, that person is subject to criminal penalties under the Code in cases where the offence was directed against the interests of the Russian Federation and in the cases provided for under an international agreement to which the Russian Federation is a party, if the offender has not been sentenced in a foreign country and is criminally liable in the territory of the Russian Federation.

1.7. **The CTC would be grateful for a progress report on the ratification of the one remaining convention by the Russian Federation.**

Preparations are being completed for the ratification of the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection, which the Russian Federation has signed. The draft documents necessary for its submission to the Federal Assembly of the Russian Federation for ratification are currently being prepared.

1.8. **The CTC would be content to know whether all the acts in the International Instruments related to the Prevention and Suppression of International Terrorism have been included as offences under the relevant laws of the Russian Federation.**

A new article 205-1 was added to the Criminal Code of the Russian Federation by means of a Federal Act of 24 June 2002. This article establishes liability for involvement in the commission of an offence of a terrorist nature or the provision of other assistance in its commission. The provisions of the article deal with highly dangerous acts: the recruitment and financing of terrorists, and other offences which are dealt with as criminal offences in international conventions on the prevention and suppression of international terrorism.

1.9. **The CTC is aware that the Russian Federation may have covered some or all of the points in the preceding paragraphs in reports or questionnaires**

submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of the Russian Federation's response to these matters as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of resolution 1373 (2001).

Annexed to this document is a copy of the responses of the Russian Federation concerning its compliance with the Special Recommendations on Terrorist Financing of FATF, which were submitted to that organization in August 2002.

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Letter dated 27 August 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 13 November 2002 (S/2002/1258).

The Counter-Terrorism Committee has received the attached third report from the Democratic Socialist Republic of Sri Lanka submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-48745 (E) 031003

Annex

Letter dated 13 August 2003 from the Permanent Representative of Sri Lanka to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to refer to your letter of 30 October 2002 and to transmit herewith the supplementary report of the Government of Sri Lanka on steps taken to implement Security Council resolution 1373 (2001) (see enclosure).*

A copy of the Mutual Legal Assistance in Criminal matters Act No. 25 of 2002 as referred in paragraph 10.1 will be sent to you in due course of time.

(*Signed*) C. **Mahendran**
Ambassador
Permanent Representative

* Annexes are on file with the Secretariat and are available for consultation.

Enclosure

Response of the Government of Sri Lanka to questions raised by the UN Counter Terrorism Committee (CTC) – 30th October 2002

Further to its submissions dated 26th December, 2001 and 15th July 2002, and in response to the letter of the Chairman of the Counter Terrorism Committee (CTC) dated 30 October 2002, the Government of Sri Lanka wishes to make the following response:

1.2 Technical Assistance was sought by the Central Bank of Sri Lanka from the International Monetary Fund (IMF) to finalise legislation for the prevention of money laundering and to combat financing of terrorism. Accordingly, the draft Prevention of Money Laundering Act and the draft Convention on the Suppression of Terrorist Financing Act that were being finalized by the relevant Ministries were sent to the IMF, and in June 2003, a legal expert from the IMF, Mr. Ross Delston, visited Sri Lanka for period of one week, for consultations with the relevant Government Ministries/Departments and Agencies.

Mr. Delston held several meetings with a Working Group of Senior Officials of the Ministry of Foreign Affairs, Ministry of Finance, Ministry of Justice and of the Central Bank. Mr. Delston's comments on the draft laws were discussed at the Meetings of the Group and it was agreed that a recommendation will be made to the Government to introduce legislation as a package of three substantive laws i.e.

(a) an Act to combat money laundering which would define and criminalise money laundering, provide for freezing of assets pending investigation and confiscation of assets upon conviction.

Provisions in the existing draft law relating to the Anti Money Laundering Authority and reporting requirements will be moved out. Provisions relating to mutual assistance will also be moved out; as a separate law will be introduced for the purpose. (See (c) below)

(b) an Act to give effect to the International Convention on the Suppression of Financing of Terrorism which would define and criminalise financing of terrorist acts and terrorist organizations, and provide for such matters as freezing of assets pending investigation, for confiscation of assets upon conviction, extradition or prosecution and for vesting of extra-territorial jurisdiction in local courts, in respect of offences under the Convention.

(c) a Financial Transactions Reporting Act to support the above two Acts.

This law will provide for the establishment of a Financial Information Unit (FIU), impose obligations on "covered institutions" to exercise customer due diligence and to maintain records, and require reporting of financial transactions to the FIU. The law will also provide for penalties for non compliance.

In the light of the above decisions, the draft Prevention of Money Laundering Act and the draft Convention on the Suppression of Terrorist Financing Act are being revised, and a Financial Transactions Reporting Act is being prepared. (The IMF expert has provided a preliminary draft law based on the Commonwealth Secretariat's Model Law).

1.3 The Exchange Control Act would be resorted to as an interim measure, pending the enactment of specific legislation. The new law on Suppression of Terrorist Financing will incorporate the requirements of Resolution 1373 and would cover the 3 points highlighted in Para. 1.3 of the Section containing questions on implementation measures. It would also cover the activities mentioned in Paragraph 1 of Resolution 1373.

1.4 The proposed law on Suppression of Terrorist Financing will incorporate provisions dealing with freezing of funds and assets suspected of being or intended for use in support of terrorism in the Terrorist Financing Convention.

1.5 Regulation 6 of the United Nations Regulation No. 1 of 2001 envisages that, where reasonable suspicion exists that any funds, financial assets or resources are intended towards the facilitation or commission of any terrorist act, such funds, financial assets or resources shall be frozen. No judicial determination is required for such freezing. However, if such act is proved before a Court of Law (in this case the High Court of Colombo) such funds etc. will be forfeited. In the circumstances, no amendment to Regulation No. 6 is deemed necessary. Further elaboration of this aspect will be effected in the context of the proposed new legislation.

1.6 In addition to the special surveillance unit established in the Exchange Control Department, matters dealing with the establishment and operation of NGOO fall within the purview of other Agencies of the Government such as the NGO Secretariat, Ministry of Policy Development & Implementation and the Ministry of Social Services. All NGOO are required to be registered under the NGC Secretariat. The monitoring of transfer of assets within Sri Lanka would be carried out by the NGO Secretariat.

1.7 The Regulations made under the U.N. Act make it an offence for "any person" who knows or has reasonable cause to believe that any person has committed an offence under the regulations or is making preparations or is attempting to commit an offence under the Regulations to fail to report the same to the Police. Failure to report any information in a person's possession relating to the movements or whereabouts of a person who has committed an offence under the regulations or is making preparations or is attempting to commit an offence under the regulations is also an offence.

Instructions have been issued to banks and finance companies by the relevant supervisory authority and to authorized money changers, authorized travel agents and money transmission service providers by the Controller of Exchange to comply strictly with the requirements of the regulations.

The **preliminary draft** of the Financial Transactions Reporting Act (draft FTRA) deals with reporting requirements more comprehensively. It will require reporting by "financial institutions" of all transactions above a prescribed threshold, and of suspicious transactions. It will also provide (without limiting) guidelines for identifying a suspicious transaction.

The guidelines (non exhaustive) for determining whether a transaction is "suspicious" include the frequency of transactions, the value of each transaction and the aggregate value of transactions, the period of time over which transactions take place, the locations at which transactions are initiated or conducted, and unusual patterns of transactions.

"Covered institutions" are also required to take into account any explanations of transactions given by a customer.

The draft FTRA defines the term "covered institutions" to include all types of financial service providers (including money transmission service providers) as well as lawyers and accountants when acting for a financial purpose or as broker, and persons dealing in precious goods such as antiques and gem stones. Provisions relating to customer due diligence, maintenance of records and reporting will apply to all covered institutions.

The draft law provides that failure to comply with a requirement to report will be punishable in the case of an individual with a fine and/or imprisonment and in the case of a body corporate with a fine. The specific value of fines/terms of imprisonment are under consideration.

It must be emphasized that the draft law referred to above is still in the preliminary stages of preparation and may undergo changes before finalisation.

1.8 Obligations devolving on Sri Lanka to prevent the use of its territory for hostile purposes against other States would not be dealt with under the provisions of the Prevention of Terrorism (Temporary Provisions) Act. Such transnational aspects will be dealt within the proposed Suppression of Terrorist Financing Act. Sri Lanka is also a signatory to the Palermo Convention and the Protocols and necessary amendments to existing legislation are being effected and new legislation to give effect to the obligations under the Convention and its Protocols is in the process of preparation.

1.9 No legislation exists at present dealing with the prevention of recruitment to terrorist groups outside Sri Lanka. No amendment to the Prevention of Terrorism Act is envisaged in this regard.

1.10 Mutual Legal Assistance in Criminal Matters Act No. 25 of 2002 is now in force and provides a comprehensive legal framework for the rendering of assistance in criminal matters, including:

(a) the location and identification of witnesses or suspects;

(b) the service of documents;

(c) the examination of witnesses;

(d) the obtaining of evidence, documents or other articles;

(e) the execution of requests for search and seizure;

(f) the effecting of a temporary transfer of a person in custody to appear as a witness;

(g) the facilitation of the personal appearance of witnesses;

(h) the provision of documents and other records;

(i) the location of the proceeds of any criminal activity;

(j) the enforcement of orders for the payment of fines or for the forfeiture of freezing of property.

Consequent to the coming into operation of the Act, Sri Lanka has also negotiated Bilateral Agreements on Mutual Legal Assistance in Criminal Matters with Hong Kong Special Administrative Region and the Russian Federation. Further bilateral negotiations in this field are also envisaged. Action is also being taken to gazette the Designated Commonwealth Countries to which the Act applies.

A copy of Act No. 25 of 2002 is attached.

1.11 The Immigration Act is now in its final stages of preparation prior to submission to Parliament. It is directed, inter alia, towards providing for the prohibition of the smuggling of persons from Sri Lanka through, inter alia, creation of a substantive offence of human smuggling. It also provides for enhanced penalties for "operators" who are behind human smuggling and vests local courts with extra-territorial jurisdiction. Sri Lanka sees its relevance to the provisions of S.C. Resolution 1373 in the light of its own experience, where human smuggling operations particularly to European countries have provided a ready reservoir for fund raising by terrorist groups and front organizations. Such activities take place, through extortion, directly from victims of human trafficking, as well as from their next of kin and relatives who are left behind in Sri Lanka.

In this connection, Sri Lanka also wishes to bring to the attention of the CTC the continuing suspected arms smuggling into Sri Lanka by armed groups particularly, from European and South East Asian countries, through the involvement of arms dealers. Six such incidents of unlawful arms smuggling into the country have been detected by the Sri Lanka Naval Authorities since April 2002. Apart from the

serious threat it poses to national security, such incidents also have an adverse effect on the on-going peace process in Sri Lanka. It is therefore imperative that States should strictly comply with their obligations under Paragraph 2 (a) of Resolution 1373 by taking effective measures to eliminate the supply of weapons to terrorists.

1.12 The Convention on the Physical Protection of Nuclear Material and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms are the only two Conventions in the field of suppression of terrorism not yet subscribed to by Sri Lanka. However, possible accession thereto is currently under consideration.

2. **Assistance and Guidelines**:

2.1 Under IMF assistance schemes, Sri Lanka has requested training assistance for bankers and bank supervisors. These matters were raised with the IMF expert during his recent visit. Sri Lanka would however like to flag its request with the CTC in order to obtain assistance in training officers of the proposed Financial Intelligence Unit (FIU) which is imperative for its effective functioning.

3. **Submission of further Report**:

Sri Lanka would readily assist the CTC at any future stage of its work and will also keep the CTC informed of all relevant developments regarding the implementation of Resolution 1373 by the Government of Sri Lanka.